

**DRAFT of Working Copy with Historical Notes of Proposed Regulations**

**TITLE 51. PUBLIC OFFICERS**

**PART III. LOBBYING DISCLOSURE<sup>1</sup>**

Deleted: COMMITTEE

**Chapter**

- 51 General Provisions
- 53 Registration and Termination
- 55 Reporting
- 57 Exemption from Registration and Reporting
- 59 Opinions and Advices of Counsel
- 61 Compliance Audits
- 63 Investigations, Hearings and Referrals
- 65 Prohibition Against Lobbying as a Sanction

**Key to Lobbying Disclosure Regulations**

**Original text** – former regulations at 51 Pa.Code § 31.1 *et seq.* promulgated under Act 1998-93.

**Track changes (working copy)** – recommend changes to the former regulations that are now required by Act 2006-134. Deletions are shown as strikeouts, and additions are underlined.

**Footnotes** – explain the reasons for the track changes in the working copy and will be used for the Preamble placed in the *Pennsylvania Bulletin*, which contains the explanation and justification for the regulations. For purposes of clarity in this document only, Act 134 is referenced as Act 2006-134, and Act 93 is referenced as Act 1998-93.

**Highlighting** – denotes major issues in the text and footnotes for the Committee's consideration.

**Italics** – language added following the Committee meeting on February 1, 2007, other than terms

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<sup>1</sup> The Legislative Reference Bureau (LRB) advised the Department of State (Department) to begin a new Part and to change the title. In compliance with section 1(h) of Executive Order 1996-1, the Department is seeking early and meaningful input from the regulated community by posting information on its website linking to the website of the Attorney General where meetings of the Lobbying Disclosure Regulations Committee (Committee) are announced in advance so that the public as well as the regulated community may attend and where copies of these DRAFT regulations may be found. In addition, the Department has provided notice of meetings of the Committee at seminars held for the regulated community, and included questions received from members of the regulated community at those seminars in the text and footnotes of this DRAFT of the regulations of Chapter 51, as noted below.

that are defined.

## **CHAPTER 51. GENERAL PROVISIONS**

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Sec.

51.1. Definitions.

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51.2. Application to Ethics Act regulations. (Reserved.)

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51.3. Filing deadlines to fall on Commonwealth working days.

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51.4. Registration periods and reporting periods.

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51.5 Delinquency.

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51.6. Deficiency.

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51.7. Biennial review of exemption threshold and reporting threshold.

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51.8. Forms, records and Department publications.

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Deleted: Commission

51.9 Amended filings.

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51.10. Filings to be originals signed under oath or affirmation.

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51.11. Electronic filing.

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51.12. Faxed filings.

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51.13. Enforcement of Commission orders.

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51.14. Parent corporations and subsidiaries.

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**§ 51.1. Definitions.**

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The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act— 65 Pa.C.S. §§ 1301-A – 1311-A (relating to lobbying disclosure).<sup>2</sup>

Deleted: The Lobbying Disclosure Act, 65 Pa.C.S. Chapter 13

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*Administrative action*—The term includes one or more of the following:

(i) An agency's proposal, consideration, promulgation or rescission of a regulation;<sup>3</sup> development or modification of a guideline or a statement of policy as defined in 1 Pa. Code § 1.4 (relating to definitions); approval or rejection of a regulation; or procurement of supplies, services and construction under 62 Pa.C.S. (relating to procurement).<sup>4</sup>

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(ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

(iii) The Governor's approval or veto of legislation.

(iv) The nomination or appointment of an individual as an officer or employee of the Commonwealth.

Deleted: employee

(v) The proposal, consideration, promulgation or rescission of an executive order.

*Affiliated political action committee*—

(i) Includes a "political action committee" as defined in section 1621(l) of the Pennsylvania Election Code (25 P. S. § 3241(l)), which:

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Deleted: which has a chairperson, a treasurer or another officer who is a principal, an employee of a principal, a lobbyist or an employee of a lobbyist

(A) has an officer who is a chairman or treasurer; and

(B) who is

1. a principal;
2. an officer or employee of a principal;
3. a lobbyist; or
4. an employee of a lobbyist.<sup>5</sup>

<sup>2</sup> Because Act 2006-134 does not have a title, the LRB advises that we refer to it in this manner at least initially.

<sup>3</sup> The Committee may wish to consider whether submitting comments on regulations is considered "administrative action." Is this like preparing testimony and testifying before a committee of the General Assembly, as in section 1306-A(l) of Act 2006-134?

<sup>4</sup> Act 2006-134 added this new language to the definition of "Administrative action" in Section 1303-A. On January 19, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) raised the question of whether a client involved in a land-use matter before the Fish and Game Commission is considered "administrative action." The Committee may wish to consider whether to address this question in this definition.

<sup>5</sup> Some members of the lobbying community have asked questions regarding this section stating that this new language

(ii) This term does not include a Federal political action committee registered only with the Federal Election Commission, which is not required to register as a political committee in Pennsylvania, pursuant to section 1624(a) of the Pennsylvania Election Code, 25 P.S. § 3244(a).<sup>6</sup>

(iii) If an employee of a registrant serves as the officer of a political action committee in what is clearly a personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, the political action committee will not be considered an affiliated political action committee.

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Agency— includes:

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(i) A department of the Executive Department of the Commonwealth; or

(ii) any Commonwealth:

(a) Agency, as defined at 42 Pa.C.S. § 102, to include any executive agency or independent agency;

(b) Board;

(c) Commission; or

(d) Authority.<sup>7</sup>

from Act 134 is difficult to comprehend. In its meeting on February 1, 2007, the Committee asked the Department to add clearer language to this definition, which it has done, as well as reformatted the definition so that it more closely tracks the definition at section 1303-A of Act 2006-134 and appears clearer to the reader. In addition, the Department plans to add the following language to Chapter 53 of the regulations (relating to registration and termination): "According to the definition of "affiliated political action committee," (PAC) at section 1303-A of Act 134, a principal or lobbyist must list an affiliated political action committee on its registration statement when a principal, an officer or employee of the principal, a lobbyist or an employee of the lobbyist is the chairperson or treasurer of the PAC." Sections 1624(b)(2) and (3) of the Pennsylvania Election Code, 25 P.S. §§ 3244(b)(2) & (3), provide that the individuals who must be included in a registration statement are the treasurer and the chairman.

6 The Committee, in its meeting on February 1, 2007, clarified that Act 2006-134 is not intended to apply to Federal PACs. The Federal Election Campaign Act may preempt state laws regarding registration, reporting and compliance for federal candidates and political committees. See 42 U.S.C. § 453(a), 11 C.F.R. § 108.7 and Federal Election Commission (FEC) Advisory Opinions 1999-12, 1994-2 and 1993-25, all of which are available on the FEC's web site, [www.fec.gov](http://www.fec.gov), listed under the topic "Law and Regulations."

7 Act 2006-134 added the phrase "of the Executive Department of the Commonwealth" to the definition of "Agency" in section 1303-A. The Committee discussed this definition extensively during its meetings on February 1, 8 and 20, 2007, and the legislative representatives on the Committee clarified that the phrase was not intended to narrow the definition of "agency." The Department reformatted the definition so that the legislative intent would appear more clearly to readers. Also, the Department added this phrase in subsection (i): "Any Commonwealth agency, as defined at 42 Pa.C.S. § 102, to include any executive agency or independent agency" to address questions that the Department discussed with the Committee on February 1 because such questions were raised at seminars on Pennsylvania's New Lobbying Disclosure Act of the Pennsylvania Bar Institute (PBI) on January 19 and again on

Anything of value—<sup>8</sup>

(i) For the limited purpose of reporting under section 1304-A or 1305-A of the act (relating to registration; and reporting), these terms include any tangible or intangible item of worth that is not de minimis.

(ii) The term is not limited to:

(A) Gifts;

(B) Hospitality;

(C) Transportation;

(D) Lodging;

(E) Services;

(F) Loans; or

(G) Money.

Association—An "association" as defined in the Association Code in 15 Pa.C.S. § 102 (relating to definitions). The term includes two or more persons associated in a common enterprise or undertaking and a corporation, a partnership, a limited liability company, or a business trust. The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general).<sup>9</sup>

February 2, 2007. See Pa. Const. Art. IV, § 1; 42 Pa.C.S. § 102 (defining "Commonwealth Agency," "Executive Agency" and "Independent Agency"); and Ford v. Philadelphia Housing Authority, 879 A.2d 162, 164 (Pa. 2005) ("A Commonwealth agency is any executive or independent agency and includes entities such as commissions, authorities, boards, and other agencies of the commonwealth government.")

8 Although this definition was not in Act 1998-93 or in Act 2006-134, the phrase is used in § 1305-A(b)(3)(i) of Act 2006-134 to describe what must be included on lobbying disclosure reports. The Committee discussed this definition extensively during its meeting on February 1, 2007. After the meeting, a committee member submitted the definition highlighted above, which is similar to the one used in Michigan, to the Department for its inclusion in the Committee's review on February 8, 2007.

9 Although this definition was not in Act 1998-93 or in Act 2006-134, the word "association" is used in the definition of "principal" in section 1303-A in Act 2006-134. The Committee asked the Department to make these changes in its meeting on February 1, 2007. The original language in this regulation at § 31.1 (relating to definitions) is identical to the language at 15 Pa.C.S. § 102 (relating to definitions).

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Deleted: or under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests),

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Deleted: anything of any nature whatsoever which is not or would not ordinarily be obtainable in the marketplace without consideration, including, but not limited to:

Deleted: money; a bank bill or note; a stock, bond, note or other investment interest in an entity; a promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money. ¶

(B) A discount or rebate not extended to the public generally. ¶

(C) A conveyance, or a contract, agreement, promise, or other obligation for a conveyance. ¶

(D) A deposit, distribution, payment, pledge, or transfer of money, or a contract, agreement, promise or other obligation for these. ¶

Deleted: (E) An advance or loan, or a contract, agreement, promise, or other obligation for an advance or loan. ¶

(F) A forgiveness of indebtedness, or a contract, agreement, promise or other obligation for a forgiveness of indebtedness. ¶

(G) Personality or an interest in personality, such as works of art, antiques or collectibles. ¶

(H) Real property or an interest in real property. ¶

(I) A service not extended free of charge to the general public. ¶

(J) The use of real property, personal property or services belonging to other persons or entities. ¶

(K) Entertainment and recreation not extended free of charge to the general public or the payment of fees or charges incident thereto. ¶

(L) A complimentary ticket/pass, or ... [1]

Deleted: or two or more persons associated in a common enterprise or undertaking

Attorney at Law—An individual admitted to practice law by a court of record of this Commonwealth.<sup>10</sup>

<sup>11</sup>

Bidder—As defined in 62 Pa.C.S. § 103 (relating to definitions).<sup>12</sup>

Board—The Disciplinary Board of the Supreme Court of Pennsylvania.<sup>13</sup>

Candidate—any candidate for State office, as defined at section 1621(a) of the Election Code, 25 P.S. § 3241(a).<sup>14</sup>

Deleted: *Audit*—A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping and reporting.

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Candidate political committee—A "candidate's political committee" as defined in section 1621(m) of the Election Code, 25 P.S. § 3241(m), and a candidate's political action committee (PAC), which includes any political committee formed by or on behalf of a specified candidate, or authorized by the candidate.<sup>15</sup>

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Child—The term includes adopted and biological children.<sup>16</sup>

Commission—The State Ethics Commission of the Commonwealth.

Compensation—Anything of value, including benefits, received or to be received from a principal by

<sup>10</sup> This definition is new to Act 2006-134 in sections 1303-A and 1309-A.

<sup>11</sup> The Committee asked the Department to delete the definition of "audit" in its meeting on February 1, 2007, because section 1308-A(f)(3) of Act 2006-134 includes the phrase "audits in accordance with generally accepted auditing standards."

<sup>12</sup> This definition is new to Act 2006-134 in section 1303-A (including use in the definition of "vendor") and derivatives of this word are used in sections 1305-A(b)(7) and in 1306-A(15). As demonstrated throughout § 51.1 (relating to definitions), the previous regulations at § 31.1 as well as these regulations include definitions excerpted directly from the statutes for the initial purposes of clarity and to promote ease of understanding. However, this practice is in contrast to rule 1.6 (relating to incorporation by reference) of the *Pennsylvania Code & Bulletin Style Manual* published by the LRB. During its meeting on February 1, 2007, the Committee decided to keep definitions from Act 2006-134 in the definitions in § 51.1 of these regulations for purposes of clarity so that the regulated community of lobbyists as well as the public would not need to read these regulations along with Act 2006-134. The Committee also decided to retain the definition of bidder because it is defined in this manner in Act 2006-134.

<sup>13</sup> This definition is new to Act 2006-134 in sections 1303-A, 1309-A(f) and 1310-A(d).

<sup>14</sup> The Committee asked the Department to define candidate as only including a State candidate in its meeting on February 1, 2007. For the reasons stated above in footnote 6, the Federal Election Campaign Act may preempt state laws regarding registration, reporting and compliance for Federal candidates and political committees.

<sup>15</sup> The Committee asked the Department to make most of these changes in its meeting on February 1, 2007 due to the inclusion of the phrase "a candidate's political action committee" in section 1307-A(a) of Act 2006-134. This is consistent with the way in which the Department has stated on its instructions to line 07 of the Lobbyist Registration Statement: "List all political committees of candidates for which the lobbyist is an officer, including both a candidate's authorized political committee and a candidate's political action committee (PAC), if any."

<sup>16</sup> Although this definition was not in Act 1998-93 or in Act 2006-134, the word "child" is used in the definition of "immediate family" in section 1303-A in Act 2006-134.

one acting as a lobbyist.

*Complaint*—A complaint on a form prescribed by the Commission, or the equivalent of the form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints under §§ 11.1 (relating to definition of "sworn complaint") and 21.1 (relating to complaints).<sup>17</sup>

*Contractor*—As defined in 62 Pa.C.S. § 103 (relating to definitions).<sup>18</sup>

*Department*—The Department of State of the Commonwealth.<sup>19</sup>

*De minimis*—Insignificant.<sup>20</sup>

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*Direct communication*—An effort, whether written, oral or by another medium, made by a lobbyist or principal, directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action. The term may include personnel expenses and office expenses.<sup>21</sup>

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*Docket*—Includes the official listing of entries to the record of a matter before the Commission, and the initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the docket of a matter before the Commission.

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Deleted: *Docket (verb)*—The initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the docket of a matter before the Commission.

*Economic consideration*—Anything of value offered or received. The term includes compensation and reimbursement for expenses.<sup>22</sup> For the limited purpose of determining an obligation to register as required by section 1304-A(b)(1)(vii), the term does not include de minimis activity of individuals who will engage in lobbying on behalf of the principal or lobbying firm.<sup>23</sup>

*Effort to influence legislative action or administrative action*—Any attempt to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action.<sup>24</sup>

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Deleted: The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment.

<sup>17</sup> Although this definition was not in Act 1998-93 or in Act 2006-134, the word "complaint" is used in Act 2006-134 in sections 1307-A(d)(6) & (8); 1307-A(f)(3)(ii); & 1309-A(b)(5).

<sup>18</sup> This definition is new to Act 2006-134 in section 1303-A (including use in the definition of "vendor").

<sup>19</sup> This definition is new to Act 2006-134 in sections 1303-A and numerous sections in Act 2006-134.

<sup>20</sup> This definition was not in Act 1998-93 or in Act 2006-134, nor is it used anywhere in Act 2006-134. The Committee asked the Department to include the definition of "de minimis" in these regulations in its meeting on February 1, 2007. See also infra note 48.

<sup>21</sup> Act 2006-134 added this sentence in section 1303-A.

<sup>22</sup> *Id.*

<sup>23</sup> The Committee asked the Department to add this additional sentence on February 20, 2007.

<sup>24</sup> This phrase needs to be defined because it is used in the definition of "lobbying" in section 1303-A in Act 2006-134. The Committee asked the Department to broaden the first sentence in this definition in its meeting on February 1,

*Election Code*—25 P. S. §§ 2600–3591.

*Employee*—An individual from whose wages an employer is required under the Internal Revenue Code (26 U.S.C.A.) to withhold Federal income tax. *For the limited purpose of determining exemption under section 1306-A(2) of the Act, the term "employee" includes an "independent contractor" under the Internal Revenue Code, when the employee engages in the activity of gathering, commenting on and disseminating the news.*<sup>25</sup>

Deleted: *Employee*

Deleted: For the limited purpose of determining exemption under section 1306(6) of the act, the term "employee" means a

*Engaging a lobbyist*—*Contracting or otherwise arranging for the services of a lobbyist or lobbying firm to lobby on behalf of a principal for economic consideration.*<sup>26</sup>

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Deleted: making an arrangement, and "engagement" means an arrangement, whereby a lobbyist is employed or otherwise hired or retained

*Engaging in lobbying*—any act by a lobbyist, lobbying firm or principal that constitutes an effort to influence legislative action or administrative action in the Commonwealth, as defined in the definition of "lobbying" at section 1303-A of the act.<sup>27</sup>

*Ethics Act*—The Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101–1113.

*Fax*—Facsimile transmission.

*Filed*—Registration statements, reports, and other official statements or papers under the act are filed on the date they are received at the Commission ~~Department~~ office whether filed electronically or delivered by United States mail, express carrier, hand-delivery or by fax. Documents filed with the Commission under the act are deemed filed on the date they are received at the Commission office

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2007 and to move the second sentence to Chapter 57 of these regulations (relating to exemption from registration and reporting).

25 In its meeting on February 1, 2007, the Committee asked the Department to exempt from the definition of "employee" a "stringer" at a newspaper under section 1306-A(2) of Act 2006-134. The Department inserted this exception into § 57.1(2) (relating to qualifications for exemptions). In addition, the Department deleted the first portion of the first sentence because section 1306(6) of Act 1998-93 used the term "employee" in this section. *Black's Law Dictionary* (8<sup>th</sup> ed. 2004) defines "employee" as "a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." *Pennsylvania worker's compensation cases define the word "employee" as the following*. "The term 'employee' as used in [this] Act is [declared] to be synonymous with servant, and includes [a]ll natural persons who perform[is] services for another for valuable consideration." *Triangle Bldg. Ctr. v. W.C.A.B. (Linch)*, 560 Pa. 540, 553 (Pa. 2000) (quoting Worker's Compensation Act, 77 P.S. § 22). "A servant is the employee of the person who has the right of controlling the manner of his performance of the work, irrespective of whether he actually exercises that control or not." *Mature v. Angelo*, 373 Pa. 593, 596 (1953) (emphasis added).

26 Although this phrase is not used in Act 2006-134, it is used in the regulations at §§ 53.2(a)(1), 53.2a(a)(1) & 53.3(a)(3), which was formerly in the regulations at §§ 33.2(a)(1), 33.2a(a)(1) & 33.3(a)(3). In its meeting on February 1, 2008, the Committee asked the Department to clarify this definition. Section 1304-A(b)(1)(vii) of Act 2006-134 requires principals and lobbying firms to register "each individual who will for economic consideration engage in lobbying on behalf of the principal or lobbying firm."

27 The definition of "engaging in lobbying" includes a principal hiring a lobbyist to do nothing because it is furthering the principal's intent to influence legislative or administrative action or the lack thereof.



whether filed electronically or delivered by United States mail, express carrier, hand-delivery or by fax. See § 51.12 (relating to faxed filings) for additional requirements when filing by fax.

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*Fund*—The Lobbying Disclosure Fund established in section 1310-A(b) of the act (relating to registration fees; fund established; system; regulations).

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*Gift*—~~Anything that~~ is received without consideration of equal or greater value. ~~The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business. The term shall not include hospitality, transportation or lodging.~~<sup>28</sup>

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(i) ~~The term does not include a political contribution which is otherwise reported as required by law or a commercially reasonable loan made in the ordinary course of business.~~<sup>29</sup>

(ii) ~~For the purpose of categorizing a reportable item under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act, the term does not include "transportation and lodging or hospitality received in connection with public office or employment" as defined in this section, which is otherwise reported as required by law.~~<sup>30</sup>

(i) ~~The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment.~~<sup>31</sup>

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(ii) ~~The term does not include information received by a legislator or other State official or employee within the scope of such office or employment, except to the extent that such has a fair market value beyond the actual information contained therein.~~

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*Hospitality*—Includes the following:

(i) Meals.

(ii) Beverages.

(iii) Recreation and entertainment.

<sup>28</sup> Act 2006-134 added these sentences in section 1303-A.

<sup>29</sup> Act 2006-134 included this language, but not as a separate subsection. It is included above in the definition of gift.

<sup>30</sup> Act 2006-134 replaced the language in subsection (ii) with the language in the last sentence of the definition of gift.

<sup>31</sup> The Committee may wish to consider if it wishes to retain the language in subsections (iii) & (iv) in the definition of gift, although it is not in Act 134. Act 1998-93 had defined "gift" as "defined in section 1102 (relating to definitions)," which includes the language in the second sentence of gift, as added by Act 2006-134.

The term shall not include gifts, transportation or lodging.<sup>32</sup>

*Immediate family*—An individual's spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law and daughter-in-law.

Deleted: or

*Indirect communication*—An effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action. The term includes, but is not limited to, letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues. The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation. The term may include personnel expenses and office expenses.<sup>33</sup>

~~*Individual lobbyist*—Any individual who engages in lobbying on behalf of a Principal for economic consideration. The term includes an attorney at law while engaged in lobbying.~~<sup>34</sup>

~~*Investigative Division*—The Investigative Division of the Commission.~~<sup>35</sup>

*Intentional*—The term has the meaning set forth in 18 Pa.C.S. § 302(b) (relating to general requirements of culpability).

*Legislation*—Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives, including draft legislation. The term includes any other matter, which may become the subject of *legislative* action by either chamber of the General Assembly. The term also includes any bills, resolutions, amendments and nominations pending or proposed by any state official or employee.<sup>36</sup>

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*Legislative action*—An action taken by a State official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of:

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(i) Legislation;

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<sup>32</sup> Act 2006-134 added these additional exceptions to the definition of “hospitality” at section 1303-A.

<sup>33</sup> Act 2006-134 added this additional sentence.

<sup>34</sup> The Department used this term and the definition in its online filing registration statements. On February 8, 2007, the Committee asked the Department to delete this term from the definitions at § 51.1.

<sup>35</sup> This phrase is not used in Act 2006-134 so does not need to be defined.

<sup>36</sup> On February 8, 2007, a member of the Committee asked the Department to expand this definition so that it would include legislation that the Governor's office drafts which may or may not become legislation, which the Department did in the first two sentences. On February 12, one of the Committee members submitted the last sentence for the Committee's consideration.

(ii) Legislative motions;

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(iii) A veto by the Governor; or

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(iv) Confirmation of appointments by the Governor or of appointments to public boards or commissions by a member of the General Assembly.<sup>37</sup>

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Lobbying—An effort to influence legislative action or administrative action in this Commonwealth.<sup>38</sup> The term includes the following:<sup>39</sup>

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(i) Direct or indirect communication;

(ii) Office expenses; and

(iii) Providing any gift, hospitality, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist or principal.<sup>40</sup>

Deleted: entertainment, meal

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(ii) Direct or indirect communication.<sup>41</sup>

At the direction of the Committee on February 1, 2007, the following exceptions to the definition of lobbying will be moved to Chapter 57 (relating to exemption to registration and reporting). The term does not include the following:

(a) only asking questions about legislation or administrative action, provided that the questions do not constitute engaging in lobbying;<sup>42</sup>

(b) only monitoring legislation or administrative action;<sup>43</sup>

(c) collective bargaining on behalf of a labor organization with a Commonwealth employer;<sup>44</sup>

<sup>37</sup> On February 8, 2007, the Committee asked the Department to make this definition more consistent with the definition in section 1303-A of Act 2006-134.

<sup>38</sup> Act 2006-134 made this change to the definition of "lobbying" at section 1303-A.

<sup>39</sup> On February 1, 2007, the Committee asked the Department to insert the definition of "lobbying" in section 1303-A of Act 2006-134 and to move the exceptions to lobbying to Chapter 57 of these regulations (relating to exemption from registration and reporting).

<sup>40</sup> Act 2006-134 made these changes to the definition of "lobbying" at section 1303-A. On January 19, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) asked whether lobbying occurs when a legislator is invited to speak to a group, and during the question-and-answer session that occurs, some questions attempt to influence legislation. Because the sponsoring organization paid the lodging and meals for the legislator to visit this group, this illustrates an activity included in the definition of lobbying.

<sup>41</sup> On February 1, 2007, the Committee and the Department both wished to move this item to (i).

<sup>42</sup> On January 19, 2007, a presenter at the seminar of the Pennsylvania Bar Institute (PBI) expressed his opinion that this would not constitute lobbying. The Committee may wish to consider whether to include this provision.

<sup>43</sup> *Id.* However, monitoring is considered within the definition of "personnel expense" at section 1303-A.

<sup>44</sup> On January 19, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) raised this question. The Committee may wish to consider whether to include this provision.

(d) discussing a potential or pending grant application with a Commonwealth agency;<sup>45</sup>

(e) only preparing comments on regulations;<sup>46</sup>

(f) responding to requests from a state agency;<sup>47</sup> and

(g) transporting groups of individuals to lobby on behalf of an issue would not require registration or reporting by the individuals, but would require registration or reporting by a principal, lobbying firm or lobbyist that sponsors this trip.<sup>48</sup>

*Lobbying firm* – An entity that engages in lobbying for economic consideration on behalf of a principal other than the entity itself.<sup>49</sup>

*Lobbyist*—An individual, firm, association, corporation, partnership, business trust or other entity<sup>50</sup> that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney at law while engaged in lobbying.<sup>51</sup> ~~The term does not include an individual who receives economic consideration which is de minimis.~~<sup>52</sup> Membership in an association alone is not sufficient to make an association member a lobbyist.<sup>53</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> Because preparing comments on regulations is similar to preparing testimony, as exempted at section 1306-A(1) of Act 2006-134, the Committee may wish to consider including it as exempted activity. On February 2, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) in Philadelphia raised this question.

<sup>47</sup> Because responding to requests from a state agency is similar to serving on an advisory board or task force, as exempted at section 1306-A(12) of Act 2006-134, the Committee may wish to consider including it as exempted activity. On February 2, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) in Philadelphia raised this question.

<sup>48</sup> Because the individuals transported would not receive compensation, other than a meal and transportation, the Committee may wish to consider whether these individuals would qualify for the exemption at section 1306-A(4) of Act 2006-134. On February 2, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) in Philadelphia raised this question.

<sup>49</sup> Act 2006-134 added this term and definition at section 1303-A.

<sup>50</sup> These additional terms are in contrast to the requirements that principals and lobbying firms report the name of “each individual” who will engage in lobbying on behalf of the principal or lobbying firm at section 1304-A(b)(1)(vii) of Act 2006-134. The Committee may wish to consider whether it wishes to address this issue. One way of doing so would be to add a definition of “individual lobbyist” to section 51.1, as done above, and use that term when discussing registration at Chapter 53.

<sup>51</sup> Act 2006-134 made these changes to the definition of “lobbyist” at section 1303-A. On January 19, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) raised the question of whether an attorney who is both a Board of Director’s member of a business trade association and an employee serving as legal counsel to one of the association’s members should be considered a “lobbyist” if the attorney is meeting with a legislator, as part of a small group, about changes to pending legislation. The Committee may wish to consider whether to address this question in the definition of “lobbyist.”

<sup>52</sup> The committee may wish to consider whether this sentence is needed in this definition. See *supra* note 20.

<sup>53</sup> The committee may wish to consider if it wishes to retain this sentence in the definition of “lobbyist.” On February 2, 2007, an attendee at the PBI seminar in Philadelphia asked if a trade association lobbies on behalf of its members, does each of its constituent members have to register as principals. See *infra* note 56.

*Negligence*—*The Committee may wish to consider these one of these two definitions. The first one is taken from the previous regulations, with edits requested by the Committee on February 8, 2007.* Conduct, whether of action or omission, is occasioned by a failure to exercise such care as a reasonably prudent and careful *person* would exercise in satisfying the requirements of the act, and is *further* characterized by inadvertence, thoughtlessness, inattention, or the like.

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*The second definition of “negligence” is taken from Pennsylvania cases and from section 3.01 of the Pennsylvania Suggested Standard Civil Jury Instructions.* *Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances.*<sup>54</sup>

*Negligent*—*Characterized by a person's failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance.*<sup>55</sup>  
*Offeror* – As defined in 62 Pa.C.S. § 103 (relating to definitions).<sup>56</sup>

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*Office expense* - An expenditure for an office, equipment or supplies utilized for lobbying.<sup>57</sup>

*Personnel expense* - - An expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, *research and monitoring staff*.<sup>58</sup> consultants, publications and public relations staff, technical staff, clerical and administrative support staff and includes individuals who engage in lobbying but are exempt from reporting under Section 1306-A (relating to exemption from registration and reporting). For an individual for whom lobbying is incidental to regular employment, the term means a good faith prorated estimate based on the value of the time devoted to lobbying.<sup>59</sup>

*Political subdivision*—A "political subdivision" as defined in section 1102 of the Ethics Act (relating to definitions).

<sup>54</sup> *Martin v. Evans*, 551 Pa. 496, 502, 711 A.2d 458, 461 (1998) (quoting *Lami v. Pa R. Co.*, 371 Pa. 106, 88 A.2d 887 (1952), and Pa. SSII (Civ) 3.01).

<sup>55</sup> *This is the definition that appears in Black's Law Dictionary (8<sup>th</sup> ed. 2004).*

<sup>56</sup> Act 2006-134 added this definition at section 1303-A.

<sup>57</sup> *Id.*

<sup>58</sup> As discussed above in the definition of “lobbying” at subsection (ii)(b), the Committee may wish to consider whether only monitoring legislation or administrative action would be considered “lobbying” and would require such individuals to register with the Department as lobbyists under Chapter 53 of these regulations (relating to registration and termination). On January 19, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) raised the question of whether “research and monitoring staff” are now reportable activities under Act 2006-134. Therefore, the Committee may wish to consider whether this activity would require reporting under Chapter 55 of these regulations (relating to reporting).

<sup>59</sup> Act 2006-134 added this definition at section 1303-A.

*Principal*—

(i) ~~An individual, firm, association, corporation, partnership, business trust or business entity on whose behalf a lobbyist influences or attempts to influence an administrative action or a legislative action; or that engages in lobbying on the principal's own behalf.~~

(i) An individual, association, corporation, partnership, business trust or other entity, including a local or state governmental body;<sup>60</sup>

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(a) on whose behalf a lobbying firm or lobbyist engages in lobbying; or

(b) that engages in lobbying on the principal's own behalf.<sup>61</sup>

(ii) Membership in an association alone is not sufficient to make an association member a principal.<sup>62</sup>

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*Registrant*—A registered lobbyist, registered lobbying firm or a registered principal.<sup>63</sup>

*Regulation*—Any rule, regulation or order in the nature of a rule or regulation, including formal and informal opinions of the Attorney General, of general application and future effect, promulgated by an agency under statutory authority in the administration of a statute administered by or relating to the agency, or prescribing the practice or procedure before the agency.

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Reporting period - - Any of the following periods:

(i) January 1 through March 31.

(ii) April 1 through June 30.

(iii) July 1 through September 30.

(iv) October 1 through December 31.

<sup>60</sup> Black's Law Dictionary defines "entity" to include governmental bodies. The Committee may wish to consider whether to include governmental bodies in the definition of "principal." On January 19, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) asked whether a political subdivision should be considered a "principal" under Act 2006-134, which must then register and file reports. A related question arose at the seminar of the PBI on January 24, 2007 as to whether a state agency that engages in lobbying should be considered a "principal" under Act 2006-134, which must then register and file reports. The Committee may wish to consider these questions in its deliberation of this definition of "principal." Also, should the Committee define "entity"? Based on the Committee's discussion on February 8, 2007, the Department has tentatively added the phrase modifying the word "entity."

<sup>61</sup> Act 2006-134 made these changes to the definition of "principal" at section 1303-A.

<sup>62</sup> The Committee may wish to consider if it wishes to retain this sentence in the definition of "principal." On January 19, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) raised the question of whether a nonprofit corporation that could be perceived as a special interest "front group" would be considered a "principal" or whether the individuals in the nonprofit corporation would also be considered "principals." See *supra* note 49.

<sup>63</sup> Act 2006-134 added this phrase at section 1303-A.

*Regulatory Review Act*—71 P. S. §§ 745.1–745.14.

*Respondent*—The subject of a complaint, notice of alleged noncompliance, investigation or formal proceeding before the Commission.<sup>64</sup>

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*Service (of official papers)*—Official papers are deemed served by the Commission, or by a Division thereof, on the date of mailing if delivered by United States mail; the pickup date if delivered by express carrier; or the date received from the Commission if hand-delivered or transmitted by fax.

*Staff*—~~The Executive Director, the Chief Counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.~~<sup>65</sup>

*State budget process* - - The consideration and passage of acts relating to expenditures of funds and the generation of revenues by the General Assembly.<sup>66</sup>

*Statement of policy* - - The term includes a guideline.<sup>67</sup>

*State official or employee*—An individual elected or appointed to a position in State government or employed by State government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

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*Transportation and lodging or hospitality received in connection with public office or employment*—Transportation, lodging or hospitality received in the course of, or incident to, the performance of official duties or responsibilities, or received on the basis of the status of the recipient as a public official or employee or State official or employee as those terms are defined under the Ethics Act or the act, respectively.

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*Vendor* - - Any offeror, bidder or contractor that, for economic consideration, sells or provides a service or supply or engages in construction. The term does not include an attorney at law, a lobbyist or a lobbying firm.<sup>68</sup>

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This section cited in 51 Pa. Code § 31.2 (relating to application to Ethics Act regulations); and 51 Pa. Code § 43.2 (relating to Commission proceedings under section 1307 of the act).

64 At its meeting on February 1, 2007, the Committee asked the Department to add the word “alleged.” At its meeting on February 8, 2007, the Committee asked the Department to delete the word “audit,” prior to the word “complaint.”

65 The word “staff” is used in different ways in Act 2006-134. It is used in section 1310-A(d)(4) of Act 2006-134 to refer to the Department providing sufficient “staff and other administrative support” to assist this Committee. The term “staff” could also be used to refer to the staff at the Commission, the Board or the Attorney General, all of which provide staff to enforce the act. The Committee may wish to consider whether to retain this definition.

66 Act 2006-134 added this definition at section 1303-A.

67 Id.

68 Id.

**§ 51.2. Application to Ethics Act regulations. (Reserved)**<sup>69</sup>**§ 51.3. Filing deadlines to fall on Commonwealth working days.**

When the deadline for filing a registration statement, report, answer, brief or other official paper, pursuant with the act, with either the Department or Commission, falls on a weekend or holiday, or on another day that the Department or Commission offices are closed or close early, the deadline for the filing shall be extended to the following Commonwealth working day.

**§ 51.4. Registration periods and reporting periods.**

(a) Registration under section 1304-A of the act (relating to registration) shall be biennial. The first registration period which commenced January 1, 2007, will continue through December 31, 2008.<sup>70</sup> *Subsequent registrations shall commence on January 1 of each odd numbered year.*<sup>71</sup>

(b) Reporting under section 1305-A of the act (relating to reporting) shall be quarterly within each calendar year: for January through March; April through June; July through September; and October through December.<sup>72</sup>

**§ 51.5. Delinquency.**

(a) A registration statement or report required to be filed under section 1304-A or 1305-A of the act (relating to registration; and reporting) is delinquent if not received by the Department on the date due as follows:

(1) Hard copy filings must be received by 5 p.m.

(2) Faxed or electronic filings may be filed until *1200 p.m. midnight.*

(b) A failure to timely file a registration statement, *a quarterly expense report, a separate expense report, a notice of termination or an amendment to one of these filings* constitutes a failure to register as required by the act, *and such delinquency continues until the filing is received by the Department in proper form.*<sup>73</sup>

<sup>69</sup> The Department believes that the language in sections 1 and 1.1 of HB 700 has resolved this issue by making the terms "gift" and "hospitality" consistent with the Ethics Act and Act 134. The Committee may wish to consider whether to delete this section by making it "Reserved."

<sup>70</sup> Act 2006-134 changed the registration period in Act 1998-93 by separating it from the terms of members of the Pennsylvania House of Representatives.

<sup>71</sup> On February 20, the Committee asked the Department to add this sentence regarding future registration.

<sup>72</sup> Act 1998-93 had a different implementation date that required initial reporting beginning August 1, 1999. Act 2006-134 has an effective date of January 1, 2007. Finally, the word "specifically" is no longer required in this subsection.

<sup>73</sup> The Committee asked the Department to consolidate these subsections on February 20, 2007.

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(a) The definitions of "gift" and "transportation and lodging or hospitality received in connection with public office or employment" in § 31.1 (relating to definitions) apply to administration of the act and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests). ¶

¶

(b) Section 35.1(k) (relating to quarterly expense reports) applies to reporting the amount of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act (relating to registration; and reporting) or under section 1105(b)(6) or (7) of the Ethics Act. ¶

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(c) A registration statement will not be considered delinquent if the Department receives a registration statement electronically or by fax if the required photograph (in the case of a lobbyist's registration statement) and the filing fee, if due, is received by the Department within five Commonwealth working days of the Department's receipt of the original electronic filing, in accordance with §§ 51.11(c) (relating to electronic filing) and 51.12(b) (relating to faxed filing).<sup>74</sup>

Deleted: (c) A failure to timely file a report constitutes a failure to report as required by the act. ¶

Deleted: (d) A delinquent registration statement or report continues to be delinquent until received in proper form as required by the act and this part.¶

#### § 51.6. Deficiency.

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(a) A registration statement, report or notice of termination required to be filed under section 1304-A or 1305-A of the act (relating to registration; and reporting) is deficient if one or more of the following exist:

(1) It does not fully and accurately include and disclose all that is required by the act and this part.

(2) It includes a false statement.

(3) It is illegible.

(4) The filer fails to use the appropriate form prescribed by the Department.

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(5) The filer fails to date the registration statement, expense report or notice of termination.

(6) The filer fails to sign the report or notice of termination under oath or affirmation as set forth in § 51.10 (relating to filings to be originals signed under oath or affirmation).

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(b) The filing of a deficient registration statement constitutes a failure to register as required by the act.

(c) The filing of a deficient report constitutes a failure to report as required by the act.

(d) The filing of a deficient notice of termination shall be ineffective.

(e) A deficient registration statement, report or notice of termination continues to be deficient until it is amended to fully and accurately disclose all of the information that is required to be disclosed by the act and this part.

<sup>74</sup> On February 20, the Committee decided to continue this five-day grace period under the previous regulations at 51 Pa. Code § 31.11(c), which now appears at §§ 51.11(c) and § 51.12(b) and asked the Department to consolidate these subsections.

**§ 51.7. Biennial review of exemption threshold and reporting threshold.<sup>75</sup>**

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(a) On a biennial basis commencing in January 2009, the Department will review the threshold under section 1306-A (relating to exemption from registration and reporting) for registration under section 1304-A (relating to registration) and the threshold for reporting under section 1305-A(d) (relating to reporting), and will increase these amounts prospectively to rates deemed reasonable for assuring appropriate disclosure.<sup>76</sup>

Deleted: On a biennial basis commencing in January 2002, the Commission will review the threshold for reporting under section 1305(d) of the act (relating to reporting) and the threshold for exemption under section 1306(3)(ii)-(iv) of the act (relating to exemption from registration and reporting), using, to the extent applicable, the procedures within § 19.5 (relating to reporting threshold adjustments) for reviewing the threshold dollar amounts in section 1105(b) of the Ethics Act (relating to statement of financial interests).

(b) On a biennial basis commencing in January 2009, the Department will review the filing fee established under section 1310-A (relating to registration fees; fund established; system; regulations) and may by regulation adjust this amount if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of this act.<sup>77</sup>

(c) Changes to the thresholds made under this section will become effective prospectively as determined by the Department. Any change to the thresholds will not be effective until the beginning of a calendar quarter.<sup>78</sup>

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(d) The Department will publish adjusted threshold amounts in the *Pennsylvania Bulletin* by June 1, 2009, and by June 1 every two years thereafter, as necessary.<sup>79</sup>

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**§ 51.8. Forms, records and Department publications.**

(a) Blank forms for filing or amending registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, or notices of termination<sup>80</sup> under the act may be obtained by contacting the Department at: Bureau of Commissions, Elections and Legislation, 210 North Office Building, Harrisburg, Pennsylvania 17120, (717) 787-5280, or by visiting the Department's office during business hours on Commonwealth working days. Forms are also available at the Department's web address: <http://www.dos.state.pa.us>.<sup>81</sup>

(b) Additional sheets of equal size on forms prescribed by the Department<sup>82</sup> may be attached to any hard copy form filed under the act, if more space is required.

<sup>75</sup> Because this section is not a requirement in this regulation, the Committee may wish to consider whether to place this information in the Preamble to these regulations since this action may only take place in a future regulation.

<sup>76</sup> Section 1308-A(j) of Act 2006-134 made several changes to section 1308(k) of Act 1998-93, which are reflected in the substituted text.

<sup>77</sup> Section 1308-A(j) of Act 2006-134 made several changes to section 1308(k) of Act 1998-93, which are reflected in the added text.

<sup>78</sup> On February 20, 2007, the Committee asked the Department to add this sentence.

<sup>79</sup> Section 1308-A(j) of Act 2006-134 made several changes to section 1308(k) of Act 1998-93, which are reflected in the substituted text.

<sup>80</sup> Section 1304-A(e) no longer requires specific termination reports.

<sup>81</sup> Sections 1304-A, 1305-A and 1308-A(b) of Act 2006-134 requires these changes.

<sup>82</sup> Section 1308-A(b) of Act 2006-134 requires this change.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, and notices of termination<sup>83</sup> filed with the Department shall remain on file for four years and shall be available for public inspection at the office of the Department in Harrisburg, Pennsylvania during business hours on Commonwealth working days. The Department will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost.<sup>84</sup>

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(d) Payments to the Commonwealth for charges under subsection (c) shall be deposited into the Fund established by section 1310-A (b) of the act (relating to registration fees; fund established; system; regulations).<sup>85</sup>

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(e) Pursuant to section 1308-A(d) of the act (relating to administration; and annual reporting), the Department will prepare and publish the following in a searchable electronic format:<sup>86</sup>

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(1) An annual report of lobbying activities in this Commonwealth.

(2) An annual listing of principals, which shall identify affiliated political action committees, lobbying firms and lobbyists that are registered to lobby for the principals.<sup>87</sup>

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(3) An annual listing of lobbying firms and lobbyists not associated with lobbying firms, which shall identify affiliated political action committees and the principals for whom the lobbying firm or lobbyist is registered to lobby.<sup>88</sup>

(4) An annual listing of registered lobbyists for each lobbying firm,<sup>89</sup> which shall identify affiliated political action committees and principals.<sup>90</sup>

(5) A biennial directory of all registered lobbyists, which shall include photographs, as well as registered lobbying firms.<sup>91</sup>

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(i) The directory will be produced and distributed on or before May 1 of each odd-numbered year.

<sup>83</sup> Section 1304-A(e) of Act 2006-134 no longer requires specific termination reports.

<sup>84</sup> Sections 1308-A(c) & (e) of Act 2006-134 require these changes.

<sup>85</sup> Sections 1310-A(a) & (b) of Act 2006-134 require these changes.

<sup>86</sup> Section 1308-A(d) of Act 2006-134 requires these changes. On February 20, 2007, the Committee asked the Department to make these additions.

<sup>87</sup> Section 1308-A(d)(2)(i) of Act 2006-134 requires these changes.

<sup>88</sup> Section 1308-A(d)(2)(ii) of Act 2006-134 added this new language.

<sup>89</sup> Section 1308-A(d)(2)(iii) of Act 2006-134 added this new subsection.

<sup>90</sup> Section 1308-A(d)(2)(ii) of Act 2006-134 added this new language.

<sup>91</sup> Section 1308-A(h) of Act 2006-134 added this new language.

(ii) ▼

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(ii) Revenue received by the Commonwealth from sales of this directory will be deposited into the Fund established by section 1310-A (b) of the act.<sup>92</sup>

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(6) Paper copies of the directory and annual reports will be made available to the public at a price not to exceed the actual cost of production.<sup>93</sup>

(7) One or all of the items in paragraphs (1)-(4) may, at the discretion of the Department, be supplemented or be combined in a single publication.<sup>94</sup>

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#### § 51.9. Amended filings.<sup>95</sup>

(a) Filings under the act may be amended.

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(b) When there is a change in information required for the registration statement under subsection 1304-A (b)(3) of the act, an amended registration statement shall be filed with the Department within 14 days of the end of the year in which the change occurs.<sup>96</sup>

(c) Principals, lobbyists and lobbying firms shall complete only those portions of their registration statements that need to be amended, in addition to the identification of the principal, lobbyist or the lobbying firm filing the amendment.<sup>97</sup>

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(d) Amended registration statements shall conform to the additional requirements detailed in § 53.4 (relating to amended registration statements).

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(e) Amended filings will not affect the Commission's authority to conduct investigations, hearings or other proceedings under the act.

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### Cross References

This section cited in 51 Pa. Code § 53.4 (relating to amended registration statements).

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#### § 51.10. Signing and Designation of Certain Filings.<sup>98</sup>

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<sup>92</sup> Section 1310-A(b) of Act 2006-134 requires these changes.

<sup>93</sup> On February 20, 2007, the Committee asked the Department to make these additions.

<sup>94</sup> Section 1308-A(d) of Act 2006-134 requires these changes.

<sup>95</sup> The Committee may wish to consider moving this section closer to the original filing requirements in § 51.4.

<sup>96</sup> Section 1304-A (d)(2) of Act 2006-134 added this new language.

<sup>97</sup> When the Department sought comments from lobbyists in December of 2006 on its initial paper and email registration statements, a lobbyist made this suggestion to the Department. The Department follows this same procedure with the filing of campaign finance registration statements and reports. The Committee may wish to consider whether it wishes the Department to follow this procedure for lobbying registration statements and expense reports.

<sup>98</sup> On February 20, 2007, the Committee asked the Department to make these changes to this section.

(a) *Signing of certain filings.*

(1) Quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination,<sup>99</sup> and amendments to these forms filed with the Department shall be signed originals bearing the signature of the filer. See §§ 51.11 and 51.12 (relating to electronic filing; and faxed filings) for requirements when filing electronically or by fax.<sup>100</sup>

(i) A document shall be deemed to be a signed original if it is filed electronically under § 51.11 or if it bears an original manual signature in ink.

(ii) *Principals, lobbying firms or lobbyists that are individuals shall sign their own filings.*

(iii) Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(iv) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(v) The signature shall appear on the line indicated on the form as prescribed by the Department.

(2) *Registration statements are not required to be signed.*

(3) Registration statements, *quarterly expense reports, separate expense reports,* notices of termination and amendments to these filed under the act shall include an affirmation subject to 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities) that the information provided therein is true and correct to the best of the filer's knowledge, information and belief.

(4) A lobbyist who signs a principal's quarterly expense report<sup>101</sup> or amendment to these, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(5) A lobbyist attaching a statement to a principal's quarterly expense report<sup>102</sup> or an amendment,

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<sup>99</sup> Section 1304-A(e) of Act 2006-134 no longer specifically requires termination reports.

<sup>100</sup> Section 1304-A of Act 2006-134 does not require that registration statements be signed, nor did Section 1304 of Act 1998-93. To provide ease of filing, the Department has not made this a requirement on the paper or email filing or the online filing of the new registration statements. *The Committee may wish to consider whether to continue this practice.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided in the statement is true and correct to the best of the lobbyist's knowledge, information and belief.

(b) *Designation of certain filings. A principal, lobbying firm or lobbyist may designate another individual or firm to complete any of its filings on the following conditions.*<sup>103</sup>

(1) *The principal, lobbying firm or lobbyist designating another individual or firm to complete any of its filings is still responsible for the accuracy of the information in the filing.*

(2) *Where a principal, lobbying firm or lobbyist designates another individual or firm to complete a form on its behalf, the principal, lobbying firm or lobbyist must submit a form prescribed by the Department or a letter containing the same information, stating that the designee has the authority to complete the form on behalf of the principal, lobbying firm or lobbyist.*

(3)

### Cross References

This section cited in 51 Pa. Code § 51.6 (relating to deficiency); 51 Pa. Code § 51.11 (relating to electronic filing); 51 Pa. Code § 53.5 (relating to termination); and 51 Pa. Code § 55.1 (relating to quarterly expense reports).

### § 51.11. Electronic filing.

(a) Electronic filing shall be available when the Department announces notice of its availability on its

<sup>103</sup> When the Department learned that third parties designated by lobbyists, lobbying firms or principals often prepare and submit registration statements for lobbyists, lobbying firms and principals, it added this possibility to the registration statements.

Deleted: (2) A principal who is an individual shall sign his own filings.

Deleted: Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf. ¶

(4) A lobbyist who is an individual shall sign his own filings.

Deleted: (5) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf. ¶

(6) The signature shall appear on the line indicated on the form as prescribed by the Commission.

Deleted: (b) Registration statements, notices of termination and amendments to these filed under the act shall include an affirmation subject to 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities) that the information provided therein is true and correct to the best of the filer's knowledge, information and belief.

Deleted: (c) Quarterly expense reports, separate quarterly expense reports, termination reports, separate termination reports and amendments to these, filed under the act, shall be filed under oath or affirmation.

Deleted: (d) A lobbyist who signs a principal's quarterly expense report, termination report or amendment to these, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief. ¶

Deleted: (e) A lobbyist attaching a statement to a principal's quarterly expense report, termination report or amendment to these, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information ... [2]

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web site.<sup>104</sup>

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(b) Upon the availability of electronic filing, forms that are required to be filed under the act may be filed electronically. The use of an electronic<sup>105</sup> signature shall have the same force and effect as a manual signature upon acceptance by the filer.

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(1) Lobbyists, lobbying firms and principals shall be deemed to comply with section 1310-A (c) of the Act for the remainder of the calendar year if they submit a registration statement, an amended registration statement or a report electronically using the Department's online filing on its web site.<sup>106</sup>

Deleted: The digital signature assigned shall be: unique to the person to whom it is assigned; capable of verification; under the sole control and authority of the person to whom it is assigned; and linked to the data in a manner so that if the data are changed, the digital signature is invalidated.

Deleted: A digital signature shall be assigned to a lobbyist or principal that submits to the Commission, in proper form as required by this section, an application to file electronically.

(2) In submitting a registration statement, an amended registration statement or a report electronically using the Department's online filing on its web site, the applicant shall be deemed to agree to all of the following:

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(i) For any registration statement, notice of termination or amendment to these that the applicant files with the Department electronically, the electronic signature shall constitute the applicant's signature under affirmation as set forth in § 51.10(b) (relating to filings to be originals signed under oath or affirmation).

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(ii) For any quarterly expense report, separate quarterly expense report, notice of termination<sup>107</sup> or amendment to these that the applicant files with the Department electronically, the electronic signature shall constitute the applicant's signature under oath or affirmation as set forth in § 51.10(c).

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(iii) The use of the electronic signature to "sign" a quarterly expense report, notice of termination

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<sup>104</sup> When the Department made the paper and email filing of registration statements available to the lobbying community on December 22, 2006, and when it made its online filing of registration statements available to the lobbying community on January 11, 2007, it announced it on its web site. The Department also communicated the availability of these forms to the lobbying community by sending emails to those who had registered previously with the Governor and faxes to those who had registered previously with the Pennsylvania Senate. In addition, the Department sent notices to the Pennsylvania Association of Government Relations (PAGR), which forwarded these notices to its members. The Committee may wish to consider whether to retain this or a similar requirement for the Department regarding future electronic filing updates.

<sup>105</sup> An electronic signature is preferable to a digital signature due to ease of administration of filing because an electronic signature is nothing more than an acknowledgement, and the Department uses an electronic filing affirmation now on its web site. A digital signature would require the Department to build a Private-Key/Public-Key Infrastructure (PKI) to enable lobbyists, lobbying firms or principals to use digital certificates when they need to sign something. An electronic signature can replace a wet signature in all circumstances unless one needs to encrypt the data or gain full non-repudiation.

<sup>106</sup> This is the way that the Department set up its interactive web site because it is logical to assume that a lobbyist, lobbying firm or principal using electronic filing will wish to continue to do so. Also, this method avoids requiring the lobbyist, lobbying firm or principal from filing an additional form with the Department. The Committee may wish to consider whether it wishes the Department to continue this practice.

<sup>107</sup> On February 20, 2007, the Committee asked the Department to make these changes.



<sup>108</sup> or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 51.10(d).

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(iv) The use of the electronic signature, to attach a statement to a quarterly expense report, notice of termination<sup>109</sup> or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 51.10(e). (4) An application to file by e-mail electronically may be rejected if the application is illegible, incomplete or unsigned.<sup>110</sup>

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(c) A registration statement or amendment that is submitted to the Department electronically is filed on the date the Department receives the document electronically if the Department receives the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within five Commonwealth working days thereafter.<sup>111</sup>

(1) If the Department does not receive the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within five Commonwealth working days from the date of receiving the document electronically, the registration statement or amendment is filed on the date the Department receives all the required items.<sup>112</sup>

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

### Cross References

This section cited in 51 Pa. Code § 51.10 (relating to filings to be originals signed under oath or affirmation); and 51 Pa. Code § 51.12 (relating to faxed filings).

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#### § 51.12. Faxed filings.

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(a) A registration statement or amendment sent by fax is filed on the date the Department receives the faxed copy,<sup>113</sup> together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within five Commonwealth working days thereafter. A registration statement or amendment shall be deemed to be a signed original if it is filed electronically

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> An online electronic filing has mechanisms in place to ensure that a registration statement or quarterly expense report is fully compliant with Act 2006-134 before it allows a registrant to proceed with its filing, so this statement does not apply to online electronic filing. This statement only applies to electronic filings submitted by email.

<sup>111</sup> See *supra* § 51.5(e). As noted in that section, the Committee may wish to consider whether to continue the five-day grace period under the previous regulations at 51 Pa.Code § 31.11(c).

<sup>112</sup> *Id.*

<sup>113</sup> On February 20, 2007, the Committee asked the Department to make these changes.



under § 51.11 (relating to electronic filing) or if it bears an original manual signature in ink.<sup>114</sup>

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(1) If the Department does not receive the fax<sup>115</sup>, together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within five Commonwealth working days from the date of receiving the faxed copy, the registration statement or amendment is filed on the date the Department receives all the required items.<sup>116</sup>

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(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

(b) A quarterly expense report, separate quarterly expense report, lobbyist's statement of limitations of knowledge, notice of termination,<sup>117</sup> or amendment to these sent by fax transmission is filed on the date the Department receives the faxed copy if the Department receives the signed original within five Commonwealth working days thereafter. The document shall be deemed to be a signed original if it is filed electronically under § 51.11 or if it bears an original manual signature in ink. If the Department does not receive the signed original within five Commonwealth working days from the date of receiving the faxed copy, the document is filed on the date the Department receives the signed original.<sup>118</sup>

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### Cross References

This section cited in 51 Pa. Code § 51.1 (relating to definitions); and 51 Pa. Code § 51.10 (relating to filings to be originals signed under oath or affirmation).

### § 51.13. Enforcement of Commission orders.

The Commission through its staff may take appropriate action to enforce its orders.

### § 51.14. Parent corporations and subsidiaries.<sup>119</sup>

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(a) Subject to the requirements of subsection (b), a parent corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the

<sup>114</sup> See *supra* § 51.5(f). As noted in that section, the Committee may wish to consider whether to continue the five-day grace period under the previous regulations at 51 Pa.Code § 31.12(a).

<sup>115</sup> On February 20, 2007, the Committee asked the Department to make these changes.

<sup>116</sup> *Id.*

<sup>117</sup> Section 1304-A(e) of Act 2006-134 no longer specifically requires termination reports.

<sup>118</sup> See *supra* § 51.5(f). As noted in that section, the Committee may wish to consider whether to continue the five-day grace period under the previous regulations at 51 Pa.Code § 31.12(b).

<sup>119</sup> The Committee may wish to consider whether to continue this practice addressed in both subsections (a) & (b) in the previous regulations at 51 Pa.Code § 31.14. Since January 1, 2007, registrants have asked this question of the Department and the Commission, and on January 19, 2007, and again on February 2, 2007, attendees at the seminars of the Pennsylvania Bar Institute (PBI) raised this question as well.

Internal Revenue Service for filing a consolidated corporate tax return. (b) When registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly expense reports, and notices of termination,<sup>120</sup> shall disclose with particularity all of the required information as to the parent corporation and the subsidiaries.

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separate termination reports

(c) If a parent corporation and its subsidiaries file separately, then each shall pay the registration fee and file all subsequent quarterly expense reports separately until the filing of a notice of termination.<sup>121</sup>

<sup>120</sup> Section 1304-A(e) of Act 2006-134 no longer specifically requires termination reports.

<sup>121</sup> On February 20, 2007, the Committee asked the Department to make these changes.

(E) An advance or loan, or a contract, agreement, promise, or other obligation for an advance or loan.

(F) A forgiveness of indebtedness, or a contract, agreement, promise or other obligation for a forgiveness of indebtedness.

(G) Personalty or an interest in personalty, such as works of art, antiques or collectibles.

(H) Real property or an interest in real property.

(I) A service not extended free of charge to the general public.

(J) The use of real property, personal property or services belonging to other persons or entities.

(K) Entertainment and recreation not extended free of charge to the general public or the payment of fees or charges incident thereto.

(L) A complimentary ticket/pass, or the purchase of a ticket/pass, to an event such as a reception, rally, fund-raiser, sporting event, theater, opera, concert, exhibition, or the like.

(M) Food, beverage or lodging.

(N) Rewards or prizes from any contest, event or drawing not open to the general public.

(O) An automobile or other means of transportation not extended free of charge to the general public.

(ii) The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employe made within the scope of such office or employment.

(iii) For the purpose of reporting the amount of gifts, transportation, lodging and hospitality, see § 35.1(k) (relating to quarterly expense reports).

*(e) A lobbyist attaching a statement to a principal's quarterly expense report, termination report or amendment to these, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided in the statement is true and correct to the best of the lobbyist's knowledge, information and belief.*

